IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

TRC.No. 226 of 1997

(TA.NO.937/1990 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM)

PETITIONER: APPELLANT: ASSESSEE:

PANKAJ SPICES TRADING COMPANY,
KOCHI – 2, REPRESENTED BY ITS PARTNER.

BY ADV. SRI.C.J.XAVIER
ADV. SRI.JOSE PALLATTUKARAN

RESPONDENT: RESPONDENT: RESPONDENT:

THE STATE OF KERALA.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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TAX REVISION CASE No. 226 OF 1997

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Dated this the 2nd November , 2007

O R D E R

H.L. Dattu, C.J.:

A dealer registered under the provisions of the Kerala General Sales Tax Act (herein after referred to as 'Act') is before us in this Tax Revision Case, being aggrieved by the orders passed by the Kerala Sales Tax Appellate Tribunal in T.A.No. 937 of 1990 dated 19th September, 1996. By the impugned order, the Tribunal has rejected the appeal filed by the assessee.

2. The assessee has raised the following questions of law for consideration and decision of this court. They are as under:

> *"i) Whether in view of fact and circumstances of the case particularly in view of fact that the purchasing dealers were registered at the time of impugned local sales, whether the Tribunal is justified in holding that the form 25 declaration cannot be accepted.*
>
> *ii) Whether the observation by the Tribunal that the purchasers have not accounted the purchase is sufficient enough to reject the claim in view of decision in 67 STC page 77 Zaid & Co. vs. State of Kerala.*
>
> *iii) Whether the Tribunal is justified in taking it as a ground for the disallowance that the declaration has not been filed before them in view of fact that there is no question that these have not been produced before the lower authorities.*
>
> *iv) Whether the finding of the Tribunal that the addition made by the Deputy Commissioner (Appeal) is reasonable*

relying on the quantity of difference without giving proper consideration to the fact that the differences were negligible and possible and categorical explanation furnished.

3. The brief facts of the case are as under: The assessee is a dealer in pepper and ginger . For the assessment year 1984-85, he had effected purchase and sale of pepper and ginger. In the annual returns filed, the assessee had claimed exemption from payment of purchase tax at the last purchase point. In support of the exemption so claimed, he had produced Form 25 issued by the purchasing dealers. The assessing authority has accepted Form 25 so produced by the assessee except in two cases, viz., in the case of M/s. Shah Dwarakadas Vallabhadas and M/s. Nagaraj Enterprises. According to the assessing authority Form 25 so produced by the assessee are defective forms. Before denying the claim for exemption, the assessing authority had issued a proposition notice to the petitioner. The petitioner/assessee had filed his reply . In the said reply, apart from contending that the declaration forms so produced are issued by the purchasing dealers, he had also undertaken before the assessing authority that he shall produce the duplicate forms within a reasonable time. Since the assessee did not produce either the duplicate forms and further did not prove the genuineness of Form 25 issued by the purchasing dealers, the assessing authority has rejected the claim for exemption in so far as the sales effected to M/s. Shah Dwarakadas Vallabhadas and M/s. Nagaraj Enterprises .

4. Aggrieved by the denial of exemption so claimed, the assessee has

preferred an appeal before the Deputy Commissioner (Appeals) of Agricultural Income Tax and Sales Tax, Ernakulam in S.T.A.No. 431 of 1989 . The appellate authority while upholding the reasonings and conclusions reached by the assessing authority, in his order dated 25.01.1990 has observed as under:

> *"I have considered the arguments with reference to the records. The total amount of local sale of goods taxable at purchase point as per accounts is Rs. 590,60,105-17. On detailed examination of the claim the assessing authority found that declarations in Form 25 filed by Sree Dwarakadas Vallabhadas and M/s. Nagaraj Enterprises were not genuine and hence he disallowed the exemption claim, covered by that declarations for a total amount of Rs.101,483-75. The learned advocate could not prove the genuineness of the claim even now and hence I find no reason to interfere."*

5. The asseessee, thereafter, had preferred an appeal before the Tribunal in T.A.No. 937 of 1990 . The Tribunal also has rejected the appeal by its order dated 19th September, 1996. While doing so, the Tribunal, at paragraphs 2 and 3 of its order, has observed as under:

> *"2. Regarding rejection of Form 25 declarations obtained from M/s. Shah Dwarakadas Vallabhadas & Co., the declarations filed had been defective in as much as difference in signature noted and the non-mentioning of the place of business. The contention that they are assessed by Assistant Commissioner , Special Circle, Mattancherry alone is not enough. There is no evidence to show that they have included the impugned turnover in their accounts. The appellant has not either cured*

that defects or proved the proper accounting of the goods by the other party.

3. Regarding the Form 25 declaration from M/s Nagaraja Enterprises, the appellant has not produced any declarations before us even though stated in the grounds of appeal that they shall."

6. Being aggrieved by the aforesaid order, the assessee is before us in this Tax Revision case.

7. Learned counsel, Shri C.J. Xavier appearing for the assessee would contend that the assessing authority, the first appeallate authority and the Tribunal are not justified in denying the claim for exemption from payment of tax at the last purchase point in the State, though the assessee had produced Form 25 declarations issued by the purchasing dealers. In support of his contention, the learned counsel has invited our attention to the observation made by a Division Bench of this Court in ***Deputy Commissioner of Sales Tax vs. Zaid and Company*** ***([1987] 67 STC 77)*** and a decision of this court in ***Deputy Commissioner of Sales Tax vs. Maroli Achuthan*** ***([1993] 91 S.T.C. 541).***

8. At the outset, we make it clear that we do not dispute or controvert the law declared by this court in the aforesaid decisions. We will advert to the conclusions reached in those decisions a little later.

9. The assessee, in the present case, is a dealer in pepper and ginger. The point of levy of tax under the Act is last purchase point in the State. In order to demonstrate that the dealer is not a last purchaser in the

State, if he has effected sales in the State, he can produce Form 25 declarations issued by the purchasing dealers. In the instant case, for claiming exemption from payment of tax at the last purchase point, the assessee had produced Form 25 declarations, said to have been issued by M/s Shah Dwarakadas Vallabhadas & Co and M/s. Nagaraj Enterprises . The assessing authority, after going through the Form 25 declarations so issued by those purchasing dealers, was of the opinion that those Forms were defective. Accordingly, the assessing authority had issued a proposition notice to the assessee that he would be denying the claim for exemption from payment of tax at the last purchase point, so made by the assessee . The assessee, while filing his reply to the proposition notice issued by the assessing authority, had only stated that the dealers, who issued the Form 25 declarations, are registered dealers in the State and are borne on the file of the same assessing authority. Apart from that, the assessee had also stated that in order to justify his claim, he would produce duplicate forms after obtaining the same from the purchasing dealers. For the reasons best known to him, the assessee did not produce those forms either before the assessing authority or before the first appellate authority or the Tribunal. The first appellate authority and the Tribunal are also fact finding authorities. The appeals filed before those authorities are in continuation of the original proceedings. If for any reason, the assessee had obtained duplicate Forms from the purchasing dealers, he could have produced those Forms before the authorities in time. For the reasons best known to him, he did not do so . The

assessing authority has come to the conclusion that the forms produced are defective forms and that the assessee is not entitled to get exemption from payment of tax at the last purchase point. This was made known to the assessee and the assessee was expected to prove the genuineness of those forms. Since that has not been done, the assessing authority had denied the claim for exemption from payment of tax at the last purchase point. Therefore, the assessing authority as well as the first appellate authority and the Tribunal are justified in holding that the assessee is not entitled for exemption from payment of tax at the last purchase point in view of the defective declaration forms produced by the assessee.

10. Now we shall refer to the decisions on which reliance is placed on by the learned counsel for the assessee. In the case of ***Deputy Commissioner of Sales Tax vs. Zaid and Company*** (cited supra), the court has observed as under:

> *"Under rule 32(14) of the Kerala General Sales Tax Rules, 1963, a dealer in goods taxable at the point of last purchase in the State may prove that he is not the last purchaser by the production of a declaration in form 25 obtained from the person to whom he has sold the goods. Once such a declaration is produced the incidence of taxation at the last purchase point is on the purchaser who issues the declaration. "*

11. As we have already stated, we do not doubt the correctness or otherwise of the declaration of law made by this court. This court has only stated that if declaration forms are produced from the person to whom the

dealer has sold the goods, then he would be entitled for exemption from payment of tax at the last purchase point. It does not mean that even if a dealer produced defective declaration forms, then also he would be entitled for exemption. In order to claim exemption from payment of tax at the last purchase point, a dealer has to produce proper and genuine declaration forms issued by the purchasing dealers. If the declaration forms produced are defective or irregular or their genuineness is doubted, then it is for the assessee to prove the genuineness of those forms and then only he would be entitled for exemption from payment of tax at the last purchase point. Therefore, in our opinion, the decision on which reliance is placed on by the learned counsel for the assessee, would not assist the assessee.

12. The learned counsel also has relied on the observation made by this court in ***Deputy Commissioner of Sales Tax vs. Maroli Achuthan ([1993] 91 S.T.C. 541).*** In the said decision, the court has stated as under:

> *"The respondent, a registered dealer, sold goods to registered dealers during the years 1980-81 to 1983-84 against declarations issued by the purchasing dealers in form 25. Subsequent to the issue of declarations in form 25 the certificates of registration of the purchasing dealers were cancelled with retrospective effect. On the question whether the petitioner was entitled to claim exemption on the basis of the declarations issued by the purchasing dealers, the Appellate Tribunal held that since the purchasing dealers held valid certificate of registration at the time of the transactions in dispute, the respondent was entitled to exemption."*

Even that decision also, in our opinion, would not assist the assessee in any manner whatsoever. The declaration of law made by the Division Bench of this court in ***Deputy Commissioner of Sales Tax vs. Maroli Achuthan ([1993] 91 S.T.C. 541)*** is more or less similar to the decision rendered by a Division Bench of this court in ***Deputy Commissioner of Sales Tax vs. Zaid and Company ([1987] 67 STC 77).***

13. Having gone through the decision in ***Deputy Commissioner of Sales Tax vs. Maroli Achuthan*****,** in our opinion, the said decision would aid the Revenue more than the assessee. In that view of the matter, we are of the opinion, that all the authorities under the Act are justified in rejecting the claim of the assessee. Therefore, the Tax Revision Case filed by the assessee requires to be rejected and it is rejected. All the questions of law framed by the assessee is answered against the assessee and in favour of the Revenue.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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Dated this the 2nd November, 2007

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